

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING  
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
AND NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **October 20, 2005**, at 10:00 a.m.  
in the Auditorium of the State Resources Building,  
1416 Ninth Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **October 20, 2005**, following the Public Meeting  
in the Auditorium of the State Resources Building,  
1416 Ninth Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **October 20, 2005**, following the Public Hearing  
in the Auditorium of the State Resources Building,  
1416 Ninth Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD**

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STEVEN L. RANK, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **October 20, 2005**.

1.    TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
                         Chapter 4, Subchapter 4, Article 24  
                         Section 1644  
                         **[Metal Scaffolds](#)**
  
2.    TITLE 8:        **SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING**  
                         **SAFETY ORDERS**  
                         Chapter 4, Subchapter 18, Article 3, Section 8354 and  
                         Article 8, New Sections 8397.14, 8397.15, and 8397.16  
                         **[Fire Protection in Shipyard Employment II](#)**

A description of the proposed changes are as follows:

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**  
Chapter 4, Subchapter 4, Article 24  
Section 1644  
**Metal Scaffolds**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

This rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing Safety Order, dated March 7, 2005, recommending that the maximum height of the intersection of crossbracing used in lieu of a standard guardrail with a midrail on a scaffold be reduced from 36 inches above the work platform to 30 inches. The Division noted that the 36-inch maximum height of the crossbracing intersection, contained in Construction Safety Orders, Section 1644(a)(6)(B), is inconsistent with the Federal OSHA counterpart standard found in 29 Code of Federal Regulations (CFR) 1926.451(g)(4)(xv), which permits a maximum height of 30 inches. Consequently, the state standard is not at least as effective as its federal counterpart standard.

#### **Section 1644(a)(6)(B)**

Existing Section 1644(a) contains general requirements pertaining to metal scaffolds, including but not limited to weight design, planks, ties, use of guys or outriggers to prevent tipping or upsetting, wind loading, and railings. Section 1644(a)(6) requires that securely attached railings as provided by the scaffold manufacturer, or other material equivalent in strength to the standard 2- by 4-inch wood railing made from "selected lumber," be installed on open sides and ends of work platforms 7 ½ feet or more above grade. The top rail shall be located at a height of not less than 42 inches nor more than 45 inches measured from the upper surface of the top rail to the platform level. A midrail shall be provided approximately halfway between the top rail and the platform. Subparagraph (B) to 1644(a)(6) states that "X" bracing is acceptable as a midrail if the intersection of the "X" falls between 20 inches and 36 inches above the work platform. This 36-inch maximum height of the intersection of the crossbracing is inconsistent with federal counterpart standards contained in 29CFR1926.451, which limits the height to only 30 inches.

Pursuant to Labor Code Section 142(a)(2), the Occupational Safety and Health Standards Board (Board) is required to adopt standards at least as effective as comparable federal standards. Therefore, an amendment is proposed to reduce the maximum height of the crossbracing intersection to 30 inches in order to be at least as effective as its federal counterpart standard. The proposed amendment would have the effect of reducing the intersection height of crossbracing on scaffolds, used in lieu of a standard guardrail with a midrail, for consistency with requirements contained in 29CFR1926.451.

### **COST ESTIMATES OF PROPOSED ACTION**

#### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

## **DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program.

(See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.) The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8:     **SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING  
SAFETY ORDERS**  
Chapter 4, Subchapter 18, Article 3, Section 8354 and  
Article 8, New Sections 8397.14, 8397.15, and 8397.16  
**Fire Protection in Shipyard Employment II**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards addressing Fire Protection in Shipyard Employment on September 15, 2004, as 29 Code of Federal Regulations, Sections 1915.501, .502, .503, .504, .505, .506, .507, .508, and .509. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 69, No. 178, pages 55,668-55,708, September 15, 2004, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards, which are the same as the federal standard except for editorial and format differences.

The federal Fire Protection in Shipyard Employment; Final Rule standard was developed through the federal negotiated rulemaking process and will provide increased protection from fire hazards for nearly 98,000 workers in the ship building, ship repair and ship breaking (Shipyard) industries. The Final Rule incorporates 19 national consensus standards from the National Fire Protection Association (NFPA) and includes relevant information from other sources, including federal OSHA's general industry standard on

fire protection, as well as procedures from the U.S. Navy and U.S. Coast Guard. The federal standard requires a written fire watch policy and also discontinues the practice allowing workers who perform hot work, such as welding cutting, or grinding to act as their own fire watch. The Final Rule also affords employers flexibility by allowing them to rely on a combination of fire response organizations (e.g., internal, external, or both) rather than requiring them to establish internal fire brigades.

On March 17, 2005, the Board adopted proposed amendments to Title 8, Chapter 4, Subchapter 18, Article 3, Section 8354 and Article 8, Section 8397 and new Sections 8397.10, .11, .12 and .13 of the Ship Building, Ship Repairing and Ship Breaking Safety Orders. The proposed amendments were intended to render California's shipyard standards at least as effective as the federal standard previously mentioned. The proposed amendments adopted by the Board at the March 17, 2005, Business Meeting addressed the following issues: definitions, standards pertaining to multi-employer worksites, fire safety plans, fire response, and employee training. At the time, the Board staff believed that issues pertaining to hot work precautions, fire watches, and land-side fire protection along with a number of additional related definitions were adequately addressed by existing Title 8 shipyard standards. However, on March 4, 2005, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), Region IX reported via e-mail that they had concluded their review of the side by side code comparison submitted by the Board with the rulemaking package and determined that a number of issues addressed by federal shipyard standards were not adequately addressed by existing Title 8 standards. Following review of federal OSHA's March 4, 2005, e-mail (comments) to the Board, reevaluation of federal and Title 8 shipyard standards and discussions with representatives from Region IX, the Board staff proposed further amendments to Title 8 to address those issues identified in the March 4, 2005, e-mail. Consequently, this proposed rulemaking action consists of additional shipyard definitions, and addresses precautions for hot work, fire watches, and landside fire protection systems. This proposal does not address standards pertaining to hazards of fixed fire extinguishing systems on board vessels as they represent issues for which California's Occupational Safety and Health program lacks enforcement jurisdiction.

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard; however, the Board is still providing a public comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State. The standard may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

1. NFPA 10-1998, Standard for Portable Fire Extinguishers
2. NFPA 14-2000, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems
3. NFPA 72-1999, National Fire Alarm Code
4. NFPA 25-2002, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems

5. NFPA 13-1999, Standard for the Installation of Sprinkler Systems
6. NFPA 750-2000, Standard on Water Mist Fire Protection Systems
7. NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection
8. NFPA 11-1998, Standard for Low-Expansion Foam
9. NFPA 11A-1999, Standard for Medium- and High-Expansion Foam Systems
10. NFPA 17-2002, Standard for Dry Chemical Extinguishing Systems
11. NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems
12. NFPA 12A-1997, Standard on Halon 1301 Fire Extinguishing Systems
13. NFPA 2001-2000, Standard on Clean Agent Fire Extinguishing Systems

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

### **COST ESTIMATES OF PROPOSED ACTION**

According to Section IV., Summary of Final Economic and Regulatory Flexibility Analysis, beginning on page 55,698 of the federal Final Rule Preamble, federal OSHA states that the final standard will affect approximately 669 employers and about 98,000 employees in the ship building, ship repair and ship breaking industries nationwide. OSHA estimates that the final standard will prevent 1 death and 292 workplace injuries (102 lost workday injuries) annually. The Agency estimates approximately \$6.2 million in cost savings from these 292 injuries. Furthermore, federal OSHA has determined that the final standard is not an economically significant regulatory action and not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act.

Federal OSHA learned through the course of its negotiated rulemaking process in which labor and management representatives deliberated over the development of the Final Rule provisions, that the parties were able to reach consensus on practically all of the issues addressed in the Final Rule. This was largely attributable to the fact that many firms in the ship building industry are already implementing the controls and practices required by the standard. Based on discussions with a representative from California's largest ship building company about the proposed amendments, staff learned that the cost impact of what are largely administrative controls is expected to be minimal. This is because the standards contained in this proposal have to a significant degree been implemented. This is consistent with the federal OSHA finding that ship builders across the country including California are already implementing the proposed standards including those standards pertaining to land-side fire protection.

### **DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do impose unique requirements on local governments. All state, local and private employers will be required to comply with the proposed standards.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than October 14, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 20, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-



5743 or

e-mailed at [oshsb@hq.dir.ca.gov](mailto:oshsb@hq.dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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STEVEN L. RANK, Chairman